

RECORDING REQUESTED BY:

Truckee Sanitary District  
12304 Joerger Drive  
Truckee, California 96161

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826  
Attention: Duane White

No Fee-Govt. Code 6103

Nevada County Recorder  
Gregory J. Diaz

Document#: 20100007379  
Wednesday March 31 2010, at 01:09:42 PM

Paid: KP

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION

**COPY**

Re: Truckee Regional Park, 101919  
Truckee, Nevada County

(A limited portion of Nevada County Assessor's Parcel Number County 19-450-55)  
California Department of Toxic Substances Control Site #101919-11

This Covenant and Agreement ("Covenant") is made by and between Truckee Sanitary District (the "Covenantor"), the current owner of property situated in Truckee, County of Nevada, State of California, described and depicted in Exhibit "A", and the Department of Toxic Substances Control (the "Department"). The portion of the property subject to this covenant (the "Property") is described and depicted in Exhibit "B". Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code sections 25222.1 and 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, Title 22, section 67391.1.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Truckee River Regional Park (Park), totaling approximately (18.5 acres or 806,000 square feet), is more particularly described and depicted in the attached Exhibits "A". The Park is located in the area now generally bounded by

Truckee River to the north, parkland to the east and west and Brockway Road to the south. The Park is also generally described as Nevada County Assessor's Parcel Number 19-450-55.

1.02. The Property subject to this covenant is approximately 1.14 acres and is more particularly described in Exhibit "B." Exhibit "B" contains both a map and a survey site description. The Property is located within the Truckee Regional Park and positioned approximately 500-feet north of Brockway Road and 250 south of the Truckee River. The western and eastern boundaries of the Property are located west of River View Drive approximately 1,500-feet and 1,250-feet, respectively.

1.03. Covenantor has remediated the Property under the supervision and authority of the Department as the Lead Agency pursuant to H&S section 25261 (Site Designation). The Property was remediated pursuant to the Removal Action Workplan (RAW) for the Truckee Regional Park Burn Dump, including a Health Risk Assessment developed in accordance with Health and Safety Code, Division 20, Chapter 6.8 under the oversight of the Department. The RAW, including a Health Risk Assessment and a notice of exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., were released for public review and comment and subsequently approved by the Department on May 4, 2009. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including metals and dioxin/furans remain in soil above unrestricted cleanup goals at depths of two feet or more below the surface of the Property, the RAW requires a Covenant as part of the site remediation. Remediation included consolidating approximately 5,000 cubic yards of impacted soil on 2 acres to approximately 1.1 acres and installing and maintaining a low permeability multi-layer cap ("Cap") over the Property. The Cap consists of a foundation layer, low permeability layer, drainage layer and erosion resistant layer and other associated layers, as more particularly described in the engineering drawing attached as Exhibit "C" hereto. The response action also included the installation of groundwater monitoring wells ("Monitoring Wells"). Locations of the Monitoring Wells are shown on Exhibit "D". The operation and maintenance of the Cap and Monitoring Wells is to be conducted pursuant to an Operation, Maintenance and Monitoring Plan (OMP) incorporated into the Operation and Maintenance Agreement between Covenantor and the Department.

1.04. As detailed in the RAW, including a Human Health Risk Assessment, approved by the Department on May 4, 2009, all or a portion of the surface and subsurface soils within two feet of the surface of the Property contain hazardous substances, as defined in H&S section 25316, which include the following contaminants of concern up to the concentrations set forth below: arsenic up to 38 milligrams per kilogram (mg/kg), lead up to 27,000 mg/kg; and dioxin/furans up to 111 nanograms per kilogram (ng/kg). These soil concentrations were collected before consolidating approximately 5,000 cubic yards of impacted soil and installing and maintaining a Cap over the Property. The remediation levels were: 16 mg/kg for arsenic, 69 mg/kg for lead, and 6.58 ng/kg for dioxin/furans. Based on the RAW, including a Human Health Risk Assessment, the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21, day care center, would pose an

unacceptable human health risk on the Property. In conclusion the area defined in Exhibit B, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or the environment, if limited to open space land use.

1.05 Groundwater at the Property is approximately 78 feet below the ground surface. Metals, diesel, motor oil and dioxin/furans have not been detected in groundwater. The Department concludes that the groundwater does not present an unacceptable threat to human health and safety.

## ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.07. Property. "Property" is the approximately 1.1 acre portion of the Park that is the subject of the Land Use Controls.

## ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion of the property.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the APN noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

#### ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children

4.02. Soil Management.

- (a) No activities that will disturb the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) below one foot shall be allowed on the Property without approval by the Department in advance.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with a Site specific soil management plan.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Drilling for drinking water, oil, or gas without prior written approval by the Department.
- (b) Extraction of groundwater except as approved by the Department.

4.04. Non-Interference with Cap and Groundwater Monitoring Wells

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) below one foot shall not be permitted on the Property without prior written approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity or effectiveness of the Cap.
- (c) For monitoring wells: all uses of the Property shall preserve the physical accessibility to and integrity of the groundwater monitoring system.
- (d) The Cap and Groundwater Monitoring Wells System shall not be altered without prior written approval by the Department.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

4.07. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property and Monitoring Wells verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the

Owner must within 30 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 30 days of its original transmission.

#### ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

#### ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

#### ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Nevada within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested

(3) receipt of facsimile transmission or (4) receipt of electronic mail delivery:

To Owner:  
Truckee Sanitary District  
12304 Joerger Drive  
Truckee, California 96161  
Attention: Thomas S. Selfridge, P.E.  
General Manager

To Department:  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826  
Attention: Duane White

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.  
Covenantor: Truckee Sanitary District

By: Thomas S. Selfridge  
Title: Thomas S. Selfridge, P.E.  
General Manager  
Date: 1/27/10

Department of Toxic Substances Control:

By: Duane White  
Title: Duane White, P.E.  
Date: Feb - 3 - 2010

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Nevada

On January 27, 2010 before me,

Date

Susan A. Griffith, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Thomas S. Selfridge

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

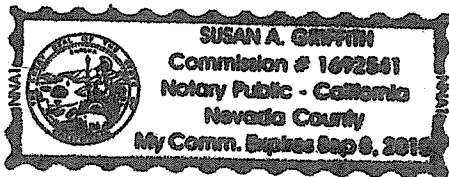
WITNESS my hand and official seal.

Signature

Susan A. Griffith

Signature of Notary Public

Place Notary Seal Above



## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer — Title(s): \_\_\_\_\_
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer — Title(s): \_\_\_\_\_
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here



GOVERNMENT CODE 27361.7

I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: Susan A Griffith

Date Commission Expires: 9/8/2010

Notary Commission Number: 1692541

Manufacturer or Vendor Number: NNA1  
(located on both sides of the notary seal border)

County and State of Commission: Nevada County California

Date: 3/3/10

Mecca Ruby  
Signature

\_\_\_\_\_  
(Firm name, if applicable)

Truckee Sanitary District  
12304 Joerger Drive  
Truckee, CA 96161-3312

# California All-Purpose Acknowledgment

State of California

County of Sacramento } SS.

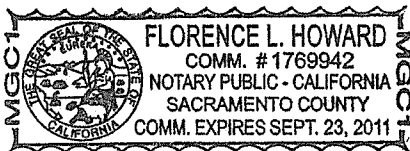
On February 3, 2010 before me, Florence S. Howard, Notary Public,  
personally appeared Duane White

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Florence S. Howard  
Signature of Notary Public



My commission expires on:

Phone No.: 916-255-1689

## EXHIBITS

A – LEGAL DESCRIPTION FOR THE SITE

B – LEGAL DESCRIPTION AND MAP SUBJECT TO THIS LAND USE COVENANT

C – ENGINEERING MAP

D – MONITORING WELL MAP

## EXHIBIT A – LEGAL DESCRIPTION FOR THE SITE

DESCRIPTION

All that real property situate in the unincorporated area of the County of Nevada, State of California, described as follows:

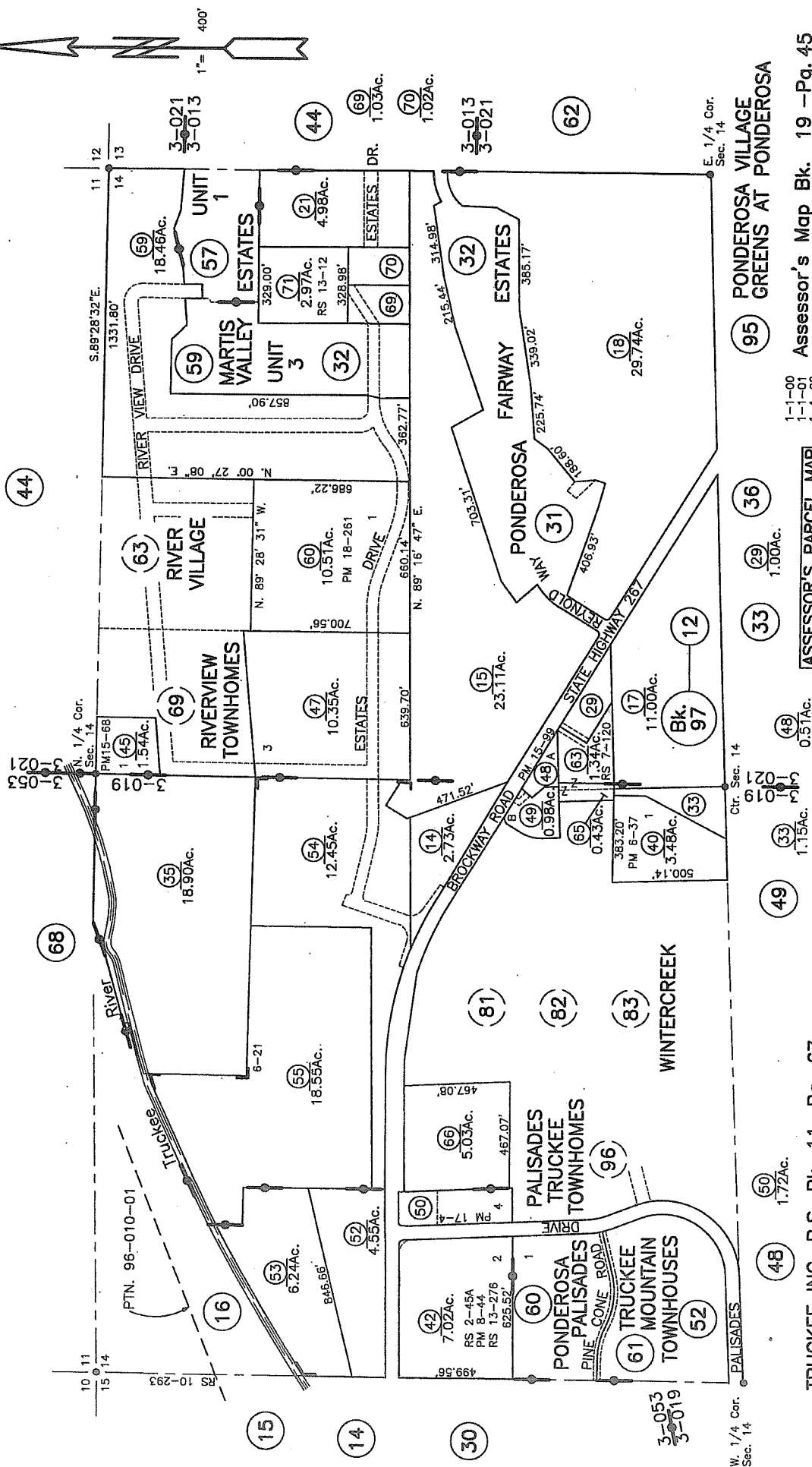
All of the following described parcels of land lying within Section 14, Township 17 North, Range 16 East, M.D.M., according to the Official Plat thereof:

- A. The North one-half (N 1/2) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4).
- B. The North one-half (N 1/2) of the South one-half (S 1/2) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4).
- C. The North one-half (N 1/2) of the Southeast quarter (SE 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4).
- D. The Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of the Southeast quarter (SE 1/4) of the Northwest quarter (NW 1/4) of the Northwest quarter (NW 1/4).
- E. The Northeast quarter (NE 1/4) of the Southeast quarter (SE 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4).
- F. The East one-half (E 1/2) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4) of the Northwest quarter (NW 1/4).
- G. All of that part of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4) lying South of the Truckee River.

PTN. N. 1/2 SEC. 14, T. 17 N., R. 16 E., M.D.B. & M.

Tax Area Code  
3-019  
3-021  
3-053

19-45  
(Fmly. Ptn. 19-07, 16, 17, 18)



ASSESSOR'S PARCEL MAP  
This map was prepared for assessment purposes only. It is assumed that the accuracy of data shown on this map is not to be used for any other purpose without the approval of the Assessor's Office.

Assessor's Map Bk. 19 -Pg. 45  
County of Nevada, Calif.

NW 10/99

TRUCKEE INC. R.S. Bk. 11, Pg. 67  
TRUCKEE RIVER CAMP (UNION ICE TRACT) ROLL 6, Pg. 21

**B – LEGAL DESCRIPTION AND MAP SUBJECT TO THIS LAND USE COVENANT**

**Legal Description  
of  
Capped Area of Truckee River Regional Park, Truckee, CA.**

All that certain real parcel of land, lying within a portion of Section Fourteen (14), Township Seventeen North (T17N) Range Sixteen East (R16E), M.D.M., being a portion of the Truckee River Regional Park, more particularly described as follows:

BEGINNING at a point bearing South 68°35'49" West from a found 2" aluminum disk on a ¾" diameter iron pipe stamped "LS 5886" at the intersection of the north right of way of River View Dr. with the west right of way of River View Drive as shown on Riverview Townhomes Phase 2 Subdivision Map, recorded in Bk. 8 of Subdivisions, Pg. 117, Official Records, Nevada County, California:

THENCE from said POINT OF BEGINNING, following the outer edge of the capped portion of the project area the following courses:

North 06°25'46" East 79.31 feet;  
North 24°36'49" West 132.71 feet;  
South 67°31'33" West 209.58 feet;  
South 52°01'32" East 21.99 feet;  
South 38°50'16" West 75.33 feet;  
South 40°52'25" East 158.05 feet;  
North 66°30'52" East 181.57 feet to said POINT OF BEGINNING, containing 1.08 acres, more or less.

The basis of bearings for this description is identical to those bearings shown on that exhibit map entitled "Monitoring Well Survey, Truckee Regional Park, West Environmental", prepared by G.C. Wallace of California Inc., dated 06-19-2008 based upon measurements to the existing monitor well locations and Control Point 1008 as shown on said map.

*Michael J. Miller*  
Michael J. Miller, P.L.S. 5583  
Alpine Land Surveyors  
7395 Gravel Ct.  
Reno, NV 89502



9-30-09.



Due to Poor Legibility of  
"Exhibit B Map Subject to this Land Use Covenant"

A full size copy of this map is on file for review at the Truckee Sanitary District and the Department of Toxic Substances Control, see Page 1 for the address of either location.

Map is referred to as Exhibit B Map Subject to this Land Use Covenant in the:

Covenant to Restrict Use of Property

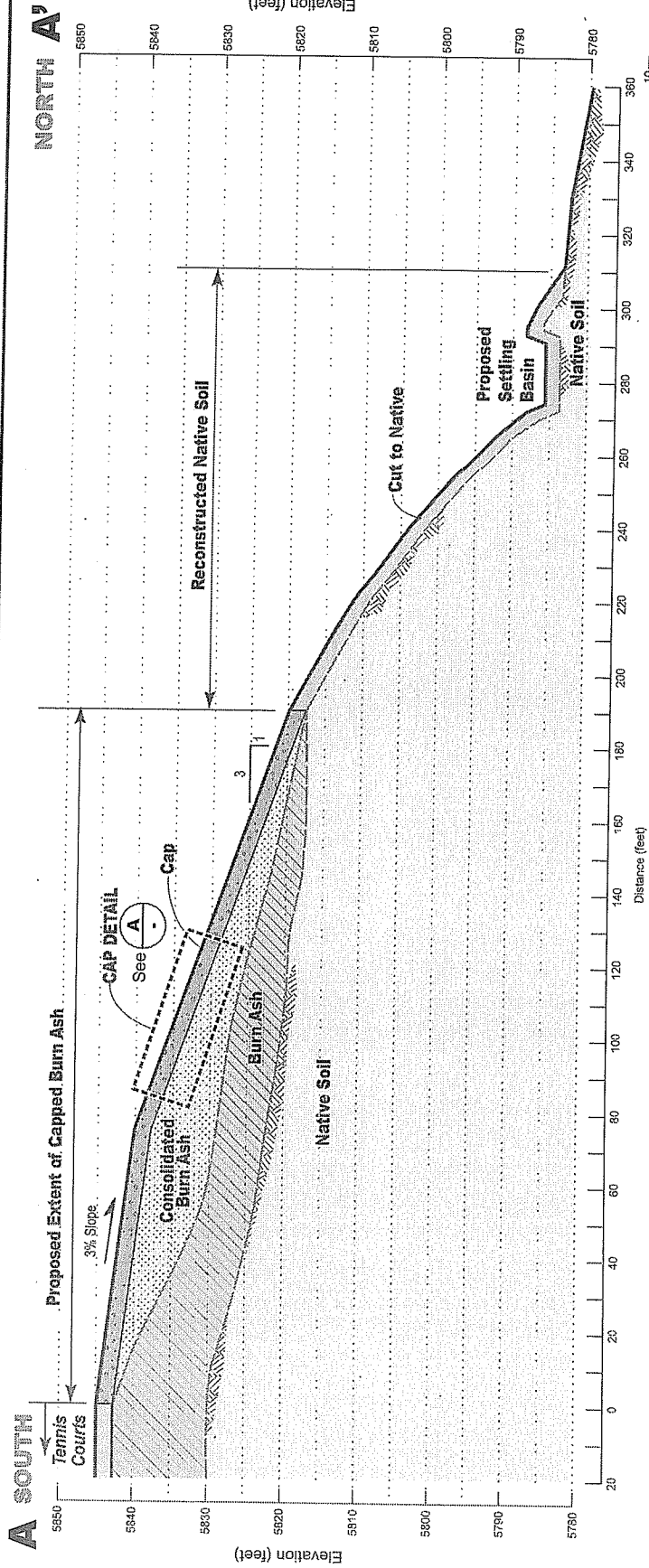
Environmental Restriction

RE: Truckee Regional Park, 101919  
Truckee, Nevada County

(A limited portion of Nevada County Assessor's Parcel Number County 19-450-55)  
California Department of Toxic Substances Control Site #101919-11



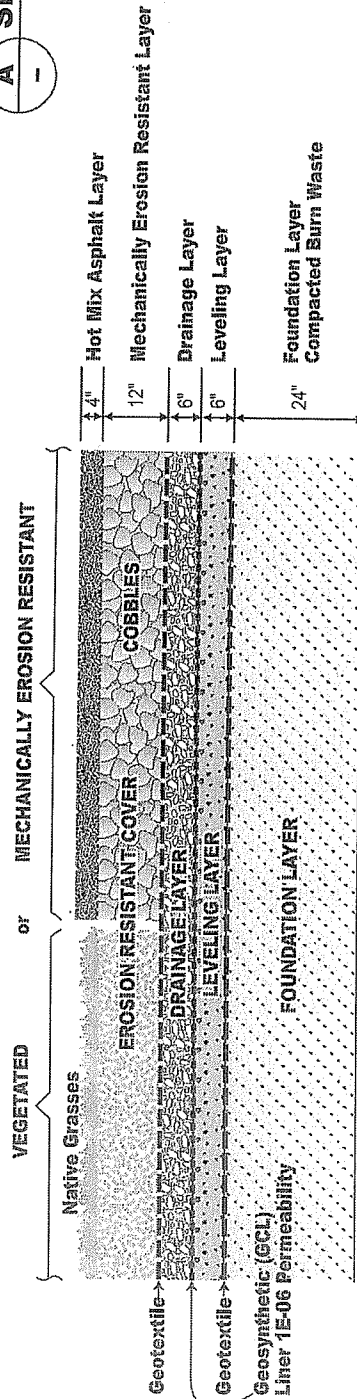
## C – ENGINEERING MAP



**A SECTION A-A'**

Approximate Scale in Feet

0 10 20



**A CAP DETAIL**

NTS

## CAP DESIGN

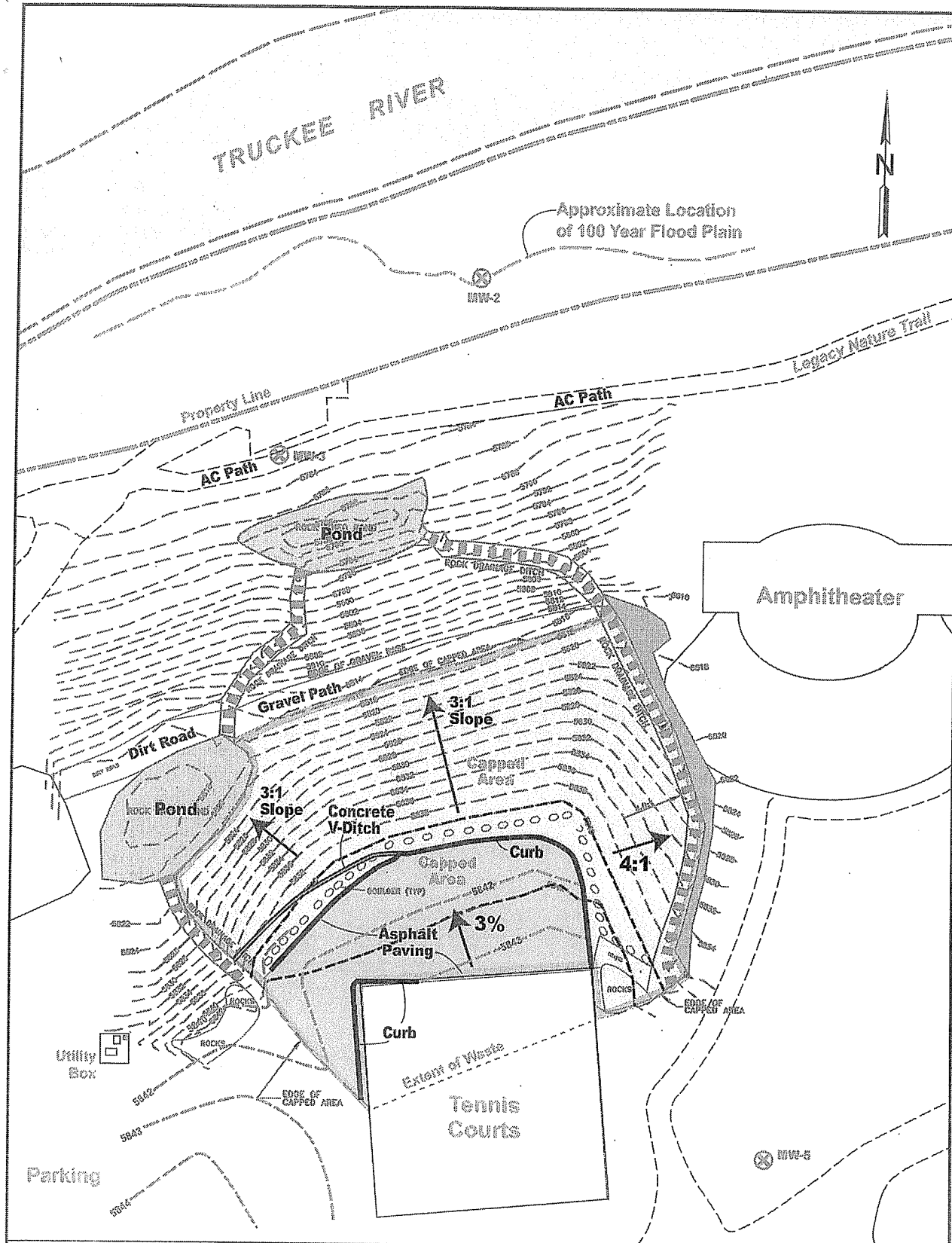
Truckee River Regional Park  
Truckee, California

**WEST**  
Environmental Science & Technology

Figure 4-1

September 2009

D – MONITORING WELL MAP



#### EXPLANATION

5840 ——— Capped final grading  
(feet above MSL)

Rock drainage ditch



Monitoring well / groundwater  
sample location

Capped Area

Rock Slope

Rock Line Pond

0 FEET 80  
Approximate Scale

EXHIBIT D

### MONITORING WELL LOCATIONS

November 2009

Truckee River Regional Park • Truckee, California

**WEST**  
Environmental Services & Technology